

## Abstract

The biggest crises in developing democracies like Brazil and Chile are rooted in the never fulfilled promise of accountability. This problematic contributes to violations to human rights, as observed in the context of housing. Although supported by governments and by the international community, adequate housing is not guaranteed to the most vulnerable population. And, where social programs exist to target that issue, their legal structures perpetrate weak accountability relations. Thus, in order to contribute to the current research on human rights and to understand accountability in the context of social programs, this study compared the legal accountability relations the urban social housing ownership models Minha Casa, Minha Vida, from Brazil, and D.S. 49, D.S. 1, and D.S. 19, from Chile. This dissertation critically assessed their comparative differences and similarities based on the understanding of the rights-based approach. As a result, this work identified that those contributory mega-housing programs have not been able to fully guarantee that the right to an adequate standard of living, because of, among others, three main reasons. One, because they lacked transparency, clarity and consistency, simplicity, objectivity, coordination, participation and decentralization among the responsibilities articulated among duty-bearers and the main rules of the programs. Two, because they were not able to materialize critics, concerns, grievance and remediation under such previous conditions, because enforceability was weak. And three, because they have failed to create a rights-based policy, that could guarantee that those who most need may be prioritized and granted access to minimum standards of adequacy, including legal security, health, affordability, social-spatial and cultural adaptation. Yet, accountability relations exercised in each of those similar legal models and their respective programs illustrate particular framings with solutions and vices, that inspire reforms to those countries and to the Global South. The legal framework of both urban social housing ownership models must be urgently adjusted in order to support accountability relations that not only refrain from violating human rights, but also that fulfill the right to housing.

**Keywords:** accountability, social housing, rights-based approach, right to adequate housing, Brazil, Chile, MCMV, D.S. 1, D.S. 19, D.S. 49.

# 1 Introduction

Socio-political crises have roots in the deterioration of accountability structures, particularly in the global South.<sup>1</sup> Despite the acknowledgment of constitutions or international treaties, limited and unequal access to the most basic human rights, such as housing, is expected to constrain at least 1.6 billion people by 2025.<sup>2</sup> That puts the legitimacy of democracy and governance in check.<sup>3</sup>

In the 2010s, Brazilian and Chilean governments created similar social housing programs that came to be reference world-wide. In Brazil, *Minha Casa, Minha Vida* was launched in 2009 and delivered 4,1 million units, according to government data.<sup>4</sup> Chilean programs continued the national history of social housing strategies with “Programa Fondo Solidario de Elección de Vivienda D.S. 49” (D.S. 49 henceforth) and “Sistema Integrado de Subsidio Habitacional D.S. 1” (D.S. 1), both created in 2011, and “Programa de Integración social y territorial D.S. 19” (D.S. 19), in 2016.<sup>5</sup>

However, in Brazil, it is estimated that 50 million individuals still live under inadequate housing conditions.<sup>6</sup> In absolute numbers, 1.2 million houses require to be repaired and 390,000 new households should yet be constructed in Chile.<sup>7</sup> Proportional to the population, residents of both countries deal with a similar housing gap and social issues that include overcrowding, unaffordability, and the lack of access to basic services, such as potable water, sanitation, security, electricity.<sup>8</sup>

Where demand-based social housing strategies have been created, their vices tend to blur positive outcomes: financing home-ownership programs have cre-

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<sup>1</sup> Anne Marie Goetz and Rob Jenkins, *Reinventing Accountability: Making Democracy Work for Human Development* (Basingstoke: Palgrave Macmillan, 2007), 2.

<sup>2</sup> Jonathan Woetzel et al, “A Blueprint for Addressing the Global Affordable Housing Challenge,” McKinsey Global Institute (October 2014).

<sup>3</sup> Goetz and Jenkins.

<sup>4</sup> Brasil, Lei 11.977, de 7 de julho de 2009, L. 11.977 (2009); Instituto de Pesquisa Econômica Aplicada and Conselho das Cidades (Brazil), *National Report for Habitat III*. Eds. Renato Balbim and Roberta Amanajás Monteiro, IPEA/CONCIDADES, 2016, 10.

<sup>5</sup> Chile, Decreto Supremo 1, (V. y U.), de 6 de junio de 2011, D.S. 1 (2011) [Sistema Integrado de Subsidio Habitacional]; Chile, Decreto Supremo 19, (V. y U.), de 17 de mayo de 2016, D.S. 19 (2016)[Programa de Integración social y territorial]; Chile, Decreto Supremo 49, (V. y U.), de 13 septiembre de 2011, D.S. 49 (2011) [Programa Fondo Solidario de Elección de Vivienda].

<sup>6</sup> See Habitat for Humanity, “Country Profile. Brazil,” Habitat for Humanity, 2019. <https://www.habitat.org/where-we-build/brazil>.

<sup>7</sup> HRC, A/HRC/37/53/Add.1, para 18.

<sup>8</sup> McTarnaghan et al; Robin King et al, “Confronting the Urban Housing Crisis in the Global South: Adequate, Secure, and Affordable Housing.” *World Resources Institute*, Working Paper, July 12, 2017. [www.citiesforall.org](http://www.citiesforall.org);

ated unsustainable, inadequate methods, better known for forced relocation, illegal evictions and corruption scandals.<sup>9</sup> A weak implementation of a human rights-based approach highly challenges the right to adequate housing the global South. In addition, fragile answerability, responsibility and enforcement dimensions perpetuate the vulnerability of the most-poor.

Discussions over the use of human rights to transform social change have been long connected to legal debates.<sup>10</sup> To combat social issues, accountability has been pointed out as a key policy tool for the materialization of human rights. Its relationship framework can ensure that norms undertake human rights as goals and means of targeting the most-vulnerable members of society and to revert structural problems.<sup>11</sup>

In that sense, accountability can play a fundamental role to minimize legal difficulties, because it can create a system of values, norms and procedures bound

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<sup>9</sup> Brasil, Tribunal de Contas da Uniao. Acórdão 2.456/2016, TC: 016.801/2015-6, Min.-Substituto Augusto Sherman. RA, at 36/2016, SeinfraUrb (Plenário Sep 21, 2016); Brasil, Tribunal de Contas da Uniao. Acórdão 1.836/2017, TC 014.728/2017-6, Min. José Múcio Moreira. RA, at 33/2017, Se-cexAL (Plenário Aug 23, 2017); HRC, A/HRC/37/53/Add.1; UN Human Rights Council (HRC), “Compilation on Brazil. Report of the Office of the High Commissioner for Human Rights,” A/HRC/WG.6/27/BRA/2, Working Group on the Universal Periodic Review (Feb 24, 2017), para 84; Sarah McTarnaghan et al, “Literature Review On Housing in Latin America and the Caribbean. Phase I: Global Housing Research Initiative,” Habitat for Humanity, Oct 2016.

<sup>10</sup> Magdalena Sepulveda Carmona, Carly Nyst and Heidi Hautala, “The Human Rights Approach to Social Protection,” SSRN Scholarly Paper, (Rochester, NY: Social Science Research Network, Jun 1, 2012), <https://papers.ssrn.com/abstract=2114384>; Simone Cecchini and Rodrigo Martínez, eds. *Inclusive Social Protection in Latin America: A Comprehensive, Rights-Based Approach*, Libros de La CEPAL 111 (Santiago, Chile: Economic Commission for Latin America and the Caribbean (ECLAC), 2012); United Nations Development Group, “The Human Rights Based Approach to Development Cooperation Towards a Common Understanding Among UN Agencies” (UNDG, 2003), <https://undg.org/document/the-human-rights-based-approach-to-development-cooperation-towards-a-common-understanding-among-un-agencies/>; Markus Kaltenborn, “The Human Rights-Based Approach to Social Protection,” in *Social Protection in Developing Countries: Reforming Systems*, eds. Bender, Pfleiderer, and Kaltenborn, Routledge Explorations in Development Studies 2, Abingdon, Oxon, (New York: Routledge, 2013); Diana Mitlin and Sheela Patel, “Reinterpreting the Rights-Based Approach: A Grassroots Perspective on Rights and Development,” In *Rights-Based Approaches to Development: Exploring the Potential and Pitfalls*, eds. Samuel Hickey and Diana Mitlin (Kumarian Press, 2009); Samuel Hickey and Diana Mitlin, “Introduction: Rights-Based Approaches to Development.” In *Rights-Based Approaches to Development*, eds. Hickey and Mitlin; Thomas Silberhorn, “Germany’s Experience in Supporting and Implementing Human Rights-Based Approaches to Health, plus Challenges and Successes in Demonstrating Impact on Health Outcomes,” *Health and Human Rights Journal* 17, n. 2 (Dec 2015); United Nations Office of the High Commissioner, “Frequently Asked Questions on a Human Rights-Based Approach to Development Cooperation” (OHCHR, 2006); Wouter Vandenhole and Paul Gready, “Failures and Successes of Human Rights-Based Approaches to Development: Towards a Change Perspective,” *Nordic Journal of Human Rights* 32, n. 4 (2014) <http://dx.doi.org/10.1080/18918131.2015.957458>.

<sup>11</sup> UN Human Rights Committee, Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to Non-Discrimination in This Context, on Her Mission to Chile, A/HRC/37/53/Add.1 (HRC, Jan 17, 2018), para 84; UN Economic and Social Council, “Concluding Observations on the Fourth Periodic Report of Chile,” E/C.12/CHL/CO/4 (ECOSOC, Dec 1, 2004).

to ground and guide under the rule of law and principles of democracy. Fundamentally based on a social dilemma, in which two or more actors must be bound to clear, structured rules, accountability also brings a democratic perspective,<sup>12</sup> reversing the relationships between powerless and powerful, by “making the powerful answer to the stifled majority in whose name they act, under threat of sanction.”<sup>13</sup> Substantiated on equality and non-discrimination, accountability can particularly challenge the status quo on behalf of the world’s most poor.

The adjustment of roles, norms and controls in the context of social housing programs can provide three main solutions in the social housing context. One, it can improve general performance by providing more clear processes, standards and mechanisms. That is essential for duty-bearers, especially public servants and politicians, in order to conduct their operations properly without failing into “error, fraud, and corruption”.<sup>14</sup> Two, that should lead to the empowerment of marginalized persons, who, although legally right-holders, are existentially vulnerable and many times unable to advocate for themselves.<sup>15</sup> Three, it can particularly support business enterprises not only to avoid adverse human rights impacts but also to positively contribute to the respect of human rights.<sup>16</sup>

Thus, underpinned by the advocacy of human rights, this comparative legal case study will enlighten the academic research in an assessment of accountability in the context of Brazilian and Chilean social housing ownership programs. The ultimate goal of this work aims at the progressive realization of the right to adequate housing through enhanced accountability relations, that observe human rights as both goals and processes. In the specific context of Brazil and Chile, social housing strategies ought to provide beneficiaries with adequate minimum standards, and ensure grievance and redress via an answerable and responsible legal design.

## 1.1 The State of the Research

Humanity is by nature affected by unequal institutions. However, in this work’s best understanding, that does not mean that human beings must endure human rights violations due to extreme inequality. The principles of social justice,

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<sup>12</sup> Michael Goodhart, “Accountable international relations”. In *The Oxford Handbook of Public Accountability*, Mark Bovens, Robert E. Goodin, and Thomas Schillemans, ed (Oxford: Oxford University Press, 2016), 355-57.

<sup>13</sup> Goetz and Jenkins, 31.

<sup>14</sup> Lucy Basset et al, “Rules, Roles, and Controls: Governance in Social Protection with an Application to Social Assistance,” *Social Protection & Labor Discussion Papers*, no. 1206 (World Bank: 2012), 11.

<sup>15</sup> Tamsin Ayliffe, Ghazia Aslam and Rasmus Schjodt. “Social Accountability in the Delivery of Social Protection: Literature Review” (*Orpington*, Development Pathways, 2017), 8.

<sup>16</sup> United Nations and Office of the High Commissioner, Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework, HR/PUB/11/04 (OHCHR, 2011).

along the years translated into human rights laws and principles, “must [...] in the first instance apply [...] and regulate the choice of a political constitution and the main elements of the economic and social system.”<sup>17</sup> And also in projection to housing rights, the means of supporting those unequal parties is to create a system that provides equal forms of treatment depending on their inequality. That can be achieved with accountability.

Inspired by a rights-based perspective, accountability can, alongside with the support for more transparency and citizen engagement, directly impact democratic institutions.<sup>18</sup> The adjustment of accountability relations should conduct to better communication methods and demand clarity in policies.<sup>19</sup> In the context of social housing programs, that translates into access to information to all citizens, especially the most vulnerable ones. And, if necessary, better accountability relations should be secured to grievance and redress, specially the most excluded members of society.<sup>20</sup>

Furthermore, a clear and consistent system of norms can strongly hinder errors and impact on service delivery.<sup>21</sup> It can also ensure the enforcement of sanctions to duty-bearers. Control mechanisms can support rights-holders not only in the revision of errors, but also in the monitoring and evaluation of performances<sup>22</sup> conducted by duty-bearers. Linked to the social housing context, such an accountability approach can enforce that housing rights are protected, respected and fulfilled.

Several studies have already conducted theoretical discussions upon the concept, structures and standards that adjustments to accountability may take.<sup>23</sup> Other authors tested accountability in the context of social programs from legal,

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<sup>17</sup> John Rawls, *A Theory of Justice*, 22. print. (Cambridge: Mass. Harvard Univ. Press, 1997), 7; UN Committee on Economic, Social and Cultural Rights, General Comment No. 4 on the right to adequate housing, E/1992/23, GC4 (CESCR, 1991), para 6.

<sup>18</sup> Shantanu Dixit, Subodh Wagle and Girish Sant, “The Real Challenge in Power Sector Restructuring: Instilling Public Control through Transparency, Accountability and Public Participation (TAP),” *Energy for Sustainable Development V*, n. 3 (Sept 2001), 95–102.

<sup>19</sup> Basset et al.

<sup>20</sup> UN Office of the High Commissioner, “Who Will Be Accountable? Human Rights and the Post-2015 Development Agenda,” HR/PUB/13/1 (New York and Geneva: OHCHR, 2013), <https://www.ohchr.org/Documents/Publications/WhoWillBeAccountable.pdf>, xi.

<sup>21</sup> Basset et al, 2.

<sup>22</sup> Ernesto Isunza Vera, “Para analizar los procesos de democratización.” In *Democratización, rendición de cuentas y sociedad civil: participación ciudadana y control social*, edited by Ernesto Isunza Vera and Alberto Olvera Rivera, 1 ed. (México, D.F: Miguel Ángel Porrúa, 2006), 283-287.

<sup>23</sup> Goetz and Jenkins; Andreas Schedler, “Conceptualizing Accountability.” in *The Self-Restraining State: Power and Accountability in New Democracies*, ed. by Andreas Schedler, Diamond, Larry, and Marc F. Plattner, (Boulder, Colo.: Lynne Rienner Publ, 1999); Mark Bovens, Robert E. Goodin, and Thomas Schillemans, ed. *The Oxford Handbook of Public Accountability*, (Oxford: Oxford University Press, 2016); Richard Mulgan, “Holding power to account : accountability in modern democracies”, (Houndmills, Basingstoke, Hampshire ; New York : Palgrave Macmillan, 2003).

public, political, social perspectives.<sup>24</sup> Legal scholars have developed intrinsic methods of analysis, which will also be integrated in the background framework of this discussion.<sup>25</sup>

This research found a gap in the literature that is both academically and socially relevant. Most of the previous legal studies and reports on the case studies failed to introduce accountability in a clear connection to human rights, and none has up to now referred to the case studies in a comparative analysis of the social housing context, as traced by this study.<sup>26</sup> Yet, this research follows the hint of previous legal and public policy scholars that have generated positive outcomes

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<sup>24</sup> Ayliffe et al; Mainwaring; Brian Wampler, *Participatory Budgeting in Brazil: Contestation, Cooperation, and Accountability* (Pennsylvania State University Press, 2010); Basset et al; Mark Bovens, “Analysing and Assessing Public Accountability. A Conceptual Framework,” European Governance Papers (EUROGOV) (CONNEX and EUROGOV networks, Jan 16, 2006), <https://ideas.repec.org/p/erp/eurogo/p0005.html>; World Bank, *From Shouting to Counting: A New Frontier in Social Development*, (2004); UN Department of Economic and Social Affairs, “SAIs, Parliaments & Citizens,” In *Citizen Engagement Practices by Supreme Audit Institutions: Compendium of Innovative Practices of Citizen Engagement by Supreme Audit Institutions for Public Accountability*, ch 6 (New York: UNDSA, 2013); John M. Ackerman, “Social Accountability in the Public Sector: A Conceptual Discussion.” *Social Development Papers*, Participation and civic engagement, no. 82 (Mar 2005). <https://www.scribd.com/document/134370806/Ackerman-Social-Accountability>; Carmen Malena, Reiner Forster and Janmejay Singh, “Social Accountability: An Introduction to the Concept and Emerging Practice” (World Bank, December 1, 2004), <http://documents.worldbank.org/curated/en/327691468779445304/Social-accountability-an-introduction-to-the-concept-and-emerging-practice>; UN-Habitat. *Urbanization and Development: Emerging Futures*. World Cities Report 2016, (Nairobi, Kenya: UN-Habitat, 2016).

<sup>25</sup> Merlijn van Hulst and Dvora Yanow, “From Policy ‘Frames’ to ‘Framing’: Theorizing a More Dynamic, Political Approach,” *American Review of Public Administration*, 46, n 1 (SAGE, 2014), <https://doi.org/10.1177/0275074014533142>; Geoffrey Wilson, “Comparative Legal Scholarship,” in *Research Methods for Law*, ed. Michael McConville and Wing Hong Chui, 2ed. Research Methods for the Arts and Humanities (Edinburgh: Edinburgh University Press, 2017); Ian Dobinson and Francis Johns, “Legal Research as Qualitative Research,” in *Research Methods for Law*, edited by Michael McConville and Wing Hong Chui, Second edition., 16–45. Research Methods for the Arts and Humanities (Edinburgh: Edinburgh University Press, 2017); Ian Dobinson and Francis Johns, “Qualitative Legal Research.” In *Research Methods for Law*, edited by Wing Hong Chui and Michael McConville (Edinburgh University Press, 2007); Kerry Rittich, “The Future of Law and Development: Second Generation Reforms and the Incorporation of the Social,” *Michigan Journal of International Law* 26 (2005 2004); David M. Trubek, “Toward a Social Theory of Law: An Essay on the Study of Law and Development,” *The Yale Law Journal* 82, no. 1 (Nov 1972); J.E. Côté and D.J. MacGregor, “Practical Legal Research.” *Alberta Law Review* 52, no. 1 (2014); Yong-Shik Lee, “Call for a New Analytical Model for Law and Development,” *Law and Development Review* 8, n. 1 (2015).

<sup>26</sup> McTarnaghan et al, 7-8; Ana Sugranyes and Fernando Jiménez Cavieres, “El derecho humano a una vivienda adecuada en Chile,” in *Con subsidio, sin derecho: la situación del derecho a una vivienda adecuada en Chile*, eds. Alfredo Rodríguez, Paula Rodríguez and Ana Sugranyes (Santiago: SUR, 2018); Ana Sugranyes and Alfredo Rodríguez, “El Traje Nuevo Del Emperador. Las Políticas de Financiamiento de Vivienda Social En Santiago de Chile,” In *Políticas de Empleo y Vivienda En Sudamérica*, ed. Instituto de la Ciudad, FLACSO (Quito: CLACSO, 2012), <http://bibliotecavirtual.clacso.org.ar/clacso/gt/20120413123620/gthi1-2.pdf>.

in the context of housing and social programs in South America, some by aiming at the adjustment of certain accountability aspects.<sup>27</sup> In general, studies have already pointed out for different models and for adjustments of accountability in Brazil and Chile, including the World Bank and the OECD.<sup>28</sup> However, no studies referred to the use of a rights-based approach in a framework of legal accountability in a comparative legal research of those respective countries. The two theories attached, accountability and the human rights-based perspective, are the solution found by this study to support the most-vulnerable in their access to adequate housing rights.

A concrete debate about accountability in Latin America started in the late 1980's, a time of legal transition to a democratic rule of law.<sup>29</sup> In that context, accountability “emerged as one of the key issues in the post-transition period.”<sup>30</sup> Domestic theoretical debates led to a better understanding of administrative law,

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<sup>27</sup> Nelson Saulo Junio, and Maria Elena Rodriguez, “Housing Rights in Brazil,” in *National Perspectives on Housing Rights*, Scott Leckie, ed, (The Hague, London, New York: Kluwer Law International, 2003); Kira Somers and Isa Baud, “My House, My Life: Decision-Making Processes and Local Citizen Participation in Housing Project Minha Casa, Minha Vida in Salvador Da Bahia,” in *Network-Association of European Researchers on Urbanisation in the South* (Enschede, 2014); Deutscher Entwicklungsdienst, “Adequate Housing: Urban Development Planning in Brazil & Participation, Habitability and Accessibility,” *Governance and Democracy: Promising Practices On the Human Rights-Based Approach in German Development Cooperation* (Bonn & Eschborn: DED, 2010); Roberto Pires, Gabriela Lotta and Vanessa Elias de Oliveira, eds, *Burocracia e Políticas Públicas No Brasil: Interseções Analíticas* (Brasília: IPEA, 2018); Enrique Peruzzotti and Catalina Smulovitz, “Held to Account: Experiences of Social Accountability in Latin America,” *Journal of Human Development* 3, no. 2 (July 2002), <https://doi.org/10.1080/14649880220147310>, 209–30; Caio Santo Amore, Lúcia Zanin Shimbo, and Maria Beatriz Cruz Rufino, eds, *Minha casa... e a cidade?* Observatório das Metrôpoles (Rio de Janeiro: Letra Capital, 2015).

<sup>28</sup> Basset et al; Samuel Paul, *Accountability in Public Services : Exit, Voice and Capture. Policy, Research, and External Affairs* working papers, WPS614 (World Bank, Mar 31, 1991). <http://documents.worldbank.org/curated/en/408071468739164508/Accountability-in-public-services-exit-voice-and-capture>; World Bank, *A Fair Adjustment: Efficiency and Equity of Public Spending in Brazil*, Brazil Public Expenditure Review (Washington DC: World Bank Group, Nov 2017). <https://www.worldbank.org/en/results/2018/10/01/world-bank-group-support-brazil-2011-2018>; OECD, *Public Procurement in Chile: Policy Options for Efficient and Inclusive Framework Agreements*, OECD Public Governance Reviews (Paris: OECD, 2017). <https://www.oecd-ilibrary.org/content/publication/9789264275188-en>; Cássio Garcia Ribeiro et al, “Unveiling the Public Procurement Market in Brazil: A Methodological Tool to Measure Its Size and Potential,” *Development Policy Review* 36, no. S1 (2018), <https://doi.org/10.1111/dpr.12301>.

<sup>29</sup> Scott Mainwaring, “Introduction: Democratic Accountability in Latin America.” In *Democratic Accountability in Latin America*, ed. Christopher Welna and Scott Mainwaring (Oxford: Oxford University Press, 2003), <https://doi.org/10.1093/0199256373.003.0001>.

<sup>30</sup> Mainwaring, para 4.

though with no express mention to accountability relations.<sup>31</sup> Therefore, international organizations and scholars networked with locals to provide detailed understanding of those institutional frameworks.<sup>32</sup>

Latin American challenges of accountability are fundamented on inefficiency inasmuch as in means to legitimize democracy in the region.<sup>33</sup> Creating effective mechanisms that may control and enforce involved stakeholders can solve those both issues, though only partially. It is also necessary to make duty-bearers responsible and answerable to their actions, which should target the materializing human rights.<sup>34</sup> That requires too, an operationalized change of behavior, where legal mechanisms and tools enable such goal.<sup>35</sup> Hence, reforms can only be comprehensive, if based on human rights and if devoted to provide social justice.<sup>36</sup>

Accordingly, the literature reveals positive outcomes as for the use of a rights-based approach in different contexts and national perspectives, including in the use of legislative measures.<sup>37</sup> Legal studies and reports<sup>38</sup> have advocated for its

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<sup>31</sup> Gabriel Celis Danziger, *Curso de Derecho Administrativo*. Vol. Tomo I & II, (Chile: Thomson Reuters, 2010); Eduardo Soto Kloss, *Derecho administrativo : bases fundamentales*. (Editorial Jurídica de Chile, 1996); Eduardo Soto Kloss, *Derecho administrativo: temas fundamentales* (Santiago: Abeledo Perrot, 2012); Lucas Rocha Furtado, *Curso de Direito Administrativo*, 5 ed, (Belo Horizonte: Fórum, 2016); Celso Antônio Bandeira de Melo, *Curso de direito administrativo* (São Paulo: Malheiros, 2001).

<sup>32</sup> Simone Cecchini and Rodrigo Martínez, eds. *Inclusive Social Protection in Latin America: A Comprehensive, Rights-Based Approach*. Libros de La CEPAL 111. Santiago, Chile: Economic Commission for Latin America and the Caribbean (ECLAC), 2012; OECD, *OECD Reviews of Regulatory Reform: Brazil 2008* (Paris: OECD Publishing, 2008). <https://doi.org/10.1787/9789264042940-en>; OECD, *OECD Reviews of Regulatory Reform Regulatory Policy in Chile Government Capacity to Ensure High-Quality Regulation: Government Capacity to Ensure High-Quality Regulation* (Paris: OECD Publishing, 2016). <https://doi.org/10.1787/9789264254596-en>; OECD, *Public Procurement in Chile*; Ribeiro et al. “Unveiling the Public Procurement Market in Brazil: A Methodological Tool to Measure Its Size and Potential.” *Development Policy Review* 36, no. S1 (2018). <https://doi.org/10.1111/dpr.12301>.

<sup>33</sup> Mainwaring, para 5.

<sup>34</sup> Mainwaring, para 6.

<sup>35</sup> Hannah Miller and Robin Redhead, “Beyond ‘Rights-Based Approaches’? Employing a Process and Outcomes Framework,” *The International Journal of Human Rights* 23 (2019), <https://doi.org/10.1080/13642987.2019.1607210>, 705-706.

<sup>36</sup> See more on social justice in Rawls.

<sup>37</sup> Silberhorn.

<sup>38</sup> See more Kaltenborn; Samuel Hickey and Diana Mitlin, “Introduction: Rights-Based Approaches to Development,” In *Rights-Based Approaches to Development*, eds. Hickey and Mitlin, 3–19; Sepulveda Carmona, Nyst and Hautala; OHCHR, HR/PUB/13/1.



application in social programs, because it “is more transparent and accountable.”<sup>39</sup> It contributes to cost reductions, for which accountability is, again, a key tool.<sup>40</sup>

Regarding the right to adequate housing, literature, policy reports, and even international norms have convened them to be “central to the combating of social exclusion” and to be “speak(ing) to every dimension of personal development.”<sup>41</sup> Based on the axiom that States endure the obligation to support the progressive realization of human rights and business enterprises, to respect them, access to housing has been articulated by several international documents.<sup>42</sup> The most influential documents include the Universal Declaration of Human Rights,<sup>43</sup> the International Covenant on Economic, Social and Cultural Rights<sup>44</sup> and its General Comment n. 4.<sup>45</sup> Other international human rights treaties that have also acknowledged the right to housing comprehend the UN international conventions Relating to the Status of Refugees, on the Elimination of All Forms of Racial Discrimination, on the Elimination of All Forms of Discrimination against Women, on the Rights of the Child, on the Rights of Persons

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<sup>39</sup> Robert Archer, “Linking Rights and Development: Some Critical Challenges.” In *Rights-Based Approaches to Development: Exploring the Potential and Pitfalls*, eds. Hickey and Mitlin, 28.

<sup>40</sup> UNDG, “The Human Rights Based Approach to Development Cooperation Towards a Common Understanding Among UN Agencies”; John M. Ackerman, “Human Rights and Social Accountability,” (World Bank May 1, 2005), <http://documents.worldbank.org/curated/en/250451468048914790/Human-rights-and-social-accountability>; OHCHR, HR/PUB/13/1; World Bank, *World Development Report 2004 : Making Services Work for Poor People* (World Bank Group, 2003), <https://openknowledge.worldbank.org/handle/10986/5986>; Mitlin Diana and Sheela Patel, “Reinterpreting the Rights-Based Approach: A Grassroots Perspective on Rights and Development,” In *Rights-Based Approaches to Development: Exploring the Potential and Pitfalls*, ed. Samuel Hickey and Diana Mitlin (Kumarian Press, 2009), 118.

<sup>41</sup> Peter Lee, “Housing Policy, Citizenship and Social Exclusion,” In *Housing and Public Policy. Citizenship, Choice and Control*, ed A. Marsh and D. Mullins, 57–78 (Buckingham: Open University Press, 1998), 76; UN Human Settlements Program, “Urbanization and Development: Emerging Futures,” *World Cities Report 2016* (Nairobi: UN-Habitat, 2016), 52. See more UN General Assembly, New Urban Agenda, A/RES/71/256 (UNGA, 2016); UN General Assembly, Transforming our world: the 2030 Agenda for Sustainable Development, A/RES/70/1 (UNGA, 2015).

<sup>42</sup> UN General Assembly, International Covenant on Economic, Social and Cultural Rights, ICESCR, 993 Treaty Series 3 (UNGA, 1966), art. 2(1); Jerome J. Shestack, “The Jurisprudence of Human Rights,” in *Human Rights in International Law: Legal and Polity Issues*, ed Theodor Meron, (Oxford University Press, 1984). On the State’s obligations regarding housing rights, see: UN Human Settlements Programme and Office of the High Commissioner for Human Rights, “Housing Rights Legislation”, United Nations Housing Rights Programme, Global Campaign for Secure Tenure n 5. (Nairobi: UN-Habitat/OHCHR, 2002). See also: UN Human Rights Committee, General Comment No. 6, HRI/GEN/1/Rev.1 (HRC, 1982); M. Magdalena Sepúlveda, “The Typologies of State Duties Imposed by the Covenant,” in *The Nature of the Obligations Under the International Covenant on Economic, Social and Cultural Rights*, 209–47 (Intersentia, 2003). See on the obligations of firms see HRC, HR/PUB/11/04.

<sup>43</sup> UN General Assembly, Universal Declaration of Human Rights, A/RES/217, 217 A (III) (UNGA, 1948), art. 25.

<sup>44</sup> UNGA, ICESCR, art. 11.

<sup>45</sup> UN CESCR, GC4.

with Disabilities, as well as ILO's Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries.<sup>46</sup> The critique exercised by the Special Rapporteur in their country-visits and reports is as well of vital control and influence.<sup>47</sup>

The international agenda has been too guiding to a social, sustainable, resilient, inclusive, and democratic future. For example, the New Urban Agenda, discussed for Habitat III, in 2016, and the Sustainable Development Goals for 2030, in 2015, portray those efforts.<sup>48</sup> Among their aims is the creation of national gradual support to strategies in the promotion of housing rights. States should respect, protect and fulfill those rights, which particularly involve adequacy in matters of security of tenure, availability of services, affordability, habitability, accessibility equal and non-discriminatory, participation, social-spatial integration and culture adaptation.<sup>49</sup>

There is no universal solution for social housing<sup>50</sup>. However, solutions can be found by comparing and allocating specific legal, cultural, historical, language, economical traits (just as examples). Therefore, the importance and necessity of

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<sup>46</sup> UN General Assembly, Convention relating to the Status of Refugees, Resolution 429 (V) (UNGA, 1954), art. 21; UN General Assembly, International Convention on the Elimination of All Forms of Racial Discrimination, A/RES/2106, 660 § (UNGA, 1965), art. 5.e.iii; UN General Assembly, Convention on the Elimination of All Forms of Discrimination against Women (UNGA, 1979), art. 14.2, 15.2; UN General Assembly, Convention on the Rights of the Child, Resolution 44/25 (UNGA, 1990), art. 16.1, 27.3; UN General Assembly, Convention on Rights of Persons with Disabilities, A/RES/61/106 (UNGA, 2006), art. 9, 28; International Labor Organization, Indigenous and Tribal Peoples Convention, C169 (ILO, Jun 27, 1989), art. 14, 16-17.

<sup>47</sup> For example UN Human Rights Council, Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to Non-Discrimination in This Context, Leilani Farha, Agenda Item 3, A/HRC/28/62 (HRC, Dec 22, 2014); UN General Assembly, Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to Non-Discrimination in This Context, A/73/310/Rev.1 (UNGA, 2018); UN Human Rights Council, Report of the Special Rapporteur on Adequate Housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, A/HRC/37/53 (HRC, Jan 17, 2018).

<sup>48</sup> UNGA, New Urban Agenda; UNGA, A/RES/70/1; UN Human Rights Council (HRC), Access to Justice for the Right to Housing: Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to Non-Discrimination in This Context, A/HRC/40/61 (HRC, Jan 15, 2019); HRC, A/HRC/37/53/Add.1; UN Commission on Human Rights, E/CN.4/2005/48/Add.3.

<sup>49</sup> UN CESCR, GC4; Economic Commission for Europe, "Guidelines on Social Housing: Principles and Examples," ECE/HBP/137, New York and Geneva: United Nations, 2006; UN Human Settlements Programme, *Habitat III Issue Papers – 20 Housing*, United Nations Conference on Housing and Sustainable Development – Habitat III (UN-Habitat, May 31, 2015).

<sup>50</sup> Duni et al "Exploring a Political Approach to Rights-Based Development in North West Cameroon" In: Hickey, Samuel, and Diana Mitlin. "Introduction: Rights-Based Approaches to Development." In *Rights-Based Approaches to Development: Exploring the Potential and Pitfalls*, 3–19. Kumarian Press, 2009, 13. That is, for example, the case of the Mbororo'en in Cameroon, an ethnic minority that secured the improvement of legal processes, though still lacked attention to gender questions and had limited improvement in horizontal relations.

this present legal research. Although housing in Brazil and housing in Chile have been extensively researched, especially since the beginning of the XXI century<sup>51</sup>, this work for the first time compares those national experiences in respect to accountability and the materialization of human rights in social housing programs.

Indeed, there is plenty of domestic literature criticizing different aspects of those national housing strategies, including architectural and urban designs, implementation of sustainable technologies, as well as sociological, economical and political factors, which should have been better observed by legislators.<sup>52</sup> According to the Special Rapporteur, Chile fails to provide urban planning strategies based on human rights.<sup>53</sup> They<sup>54</sup> also refer to various violations to the right to housing in Brazil, which, praised for the constitutionalization of that same human right, fails in adequacy and enforcement.<sup>55</sup>

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<sup>51</sup> Günther Held, *Políticas de viviendas de interés social orientadas al mercado: experiencias recientes con subsidios a la demanda en Chile, Costa Rica y Colombia*. S 96 (Santiago de Chile: Naciones Unidas, CEPAL, 2000); Diego Gil Mc Cawley, “The Political Economy of Land Use Governance in Santiago, Chile and Its Implications for Class-Based Segregation,” *The Urban Lawyer* 47, no. 1 (2015), <https://www.jstor.org/stable/26424252>; Luz María Vergara, Vincent Gruis, and Kees van der Flier, “The Role of Third Sector Organisations in the Management of Social Condominiums in Chile: The Case of Proyecto Propio,” *International Journal of Housing Policy* (Jun 18, 2019), <https://doi.org/10.1080/19491247.2019.1613871>.

<sup>52</sup> Amore, Shimbo and Rufino; Paulo Somlanyi Romeiro and Henrique Botelho Frota, eds. *Mega-projetos de impacto urbano e ambiental: violação de direitos, resistência e possibilidades de defesa das comunidades impactadas*. Instituto Brasileiro de Direito Urbanístico (Sao Paulo: IBDU, 2015); João Sette Whitaker Ferreira, “Produzir casas ou construir cidades? Desafios para um novo Brasil urbano Parâmetros de qualidade para a implementação de projetos habitacionais e urbanos”, São Paulo: FUPAM-LABHAB, 2012); Nabil Georges Bonduki, “Política habitacional e inclusão social no Brasil: revisão histórica e novas perspectivas no governo Lula,” *Arq.urb Revista Eletrônica de Arquitetura e Urbanismo* 1 (2008), [http://www.usjt.br/arq.urb/numero\\_01.html](http://www.usjt.br/arq.urb/numero_01.html); Claudia D. Chamorro, “Política habitacional en Chile: Historia, resultados y desafíos.” *Camara Chilena de la Construcción*, Documentos de Trabajo Camara Chilena de la Construcción, 72 (Apr 2013); Sebastian Smart and Vicente Burgos, “Chilean Housing Policy: A Pendant Human Rights Perspective,” *Journal of Property, Planning and Environmental Law*, 10, n 3 (Emerald Publishing Limited, 2018).

<sup>53</sup> HRC, A/HRC/37/53/Add.1, para 34-39.

<sup>54</sup> Levi Hord, “Bucking the Linguistic Binary: Gender Neutral Language in English, Swedish, French, and German.” *Western Papers in Linguistics / Cahiers Linguistiques de Western* 3, n 1 (July 21, 2016). [https://ir.lib.uwo.ca/wpl\\_clw/vol3/iss1/4](https://ir.lib.uwo.ca/wpl_clw/vol3/iss1/4). The expression “they” was used through out this work, because masculine and female nouns are not enough to qualify all possible gender classifications, including non-binary people, for which this author has favored the most neutral solution available in the formal academic English.

<sup>55</sup> HRC, A/HRC/WG.6/27/BRA/2, 48-55; Tribunal de Contas da Uniao, “Relatório de Auditoria Operacional no Programa Minha Casa Minha Vida”.(Ato originário Acórdão 2431/2012-Plenário, TC 033.568/2012-0, Fiscalis 1073/2012, Min-Substituto Weder de Oliveira, Sep 5, 2012), TCU, SE-CEX, Oct 2013; Ministerio da Transparencia, Fiscalizacao, and Controladoria Geral da Uniao. “Relatório de Avaliacao Da Execucao de Programa de Governo: Programa Minha Casa, Minha Vida-FGTS,” (Brasília: CGU, April 2017).